

**Final Exam – Remedies Spring Semester 2015
April 23, 2015, at 9 a.m.**

Instructions:

The total time permitted for the exam is 3 hours. An extra 30 minutes will be allowed to allow you to read carefully and take notes. Do not begin writing your answers during the reading time.

The exam is open book exam. The exam comprises two questions. Both are of equal value. You should then allocate equal time to both. **Question 2 comprises parts A and B.** Answer both parts. Both parts are of equal value. You may refer to your materials, i.e., **your** books, notes and outlines. You may not refer to commercial outlines, other outlines not generated by you, your hard drive, or the internet. **You will have to take the exam “Blocked”. You are bound by the Honor Code.** Remember to read the question carefully and answer only the question posed. Most points are allocated for analysis, so organize carefully to show this analysis.

For those using exam books: if more than one exam booklet has been used to answer the question, be sure your examination number appears on each booklet indicating the total number of booklets utilized by the individual number of each book. (E.g., #1 of 2, #2 of 2.) The only identification permitted to appear on the blue book is the examination number which has been assigned. Please do not indicate anything else on the blue books that will identify you.

Before you begin working on the exam, check that you have **Question 1 and 2, pages 1-2.**

The Law School has requested that the following statement be included on all exams:

“I acknowledge that in this, as in all other Law School activities, I am bound by the Emory Law School Professional Code.”

Please sign with your **exam number, not your name.**

**HAND IN ALL YOUR PAPERS.
GOOD LUCK!**

QUESTION 1

Anders Anderson (AA) inherited from his mother 50 acres of land in a remote part of Appalachia. The county had been famous for coal mining in the past but was now known for a small liberal arts college, **Confederate College** (CC), that was founded in the mid 19th century by General Beauregard. Much of the acreage fronted onto the Murray River except for a sliver of four acres that had been retained in the Beauregard family. **Marvin Mainchance** (MM) had moved to the area and was searching for commercial opportunities. He observed that the students of CC had the habit in the warm seasons of doing river floats and partying on the banks. MM discovered that **Brian Beauregard** (BB), the General's descendant, had title over the four acre sliver. BB was a formidable citizen of the state and well known for his land conservation efforts. MM told BB he wanted to build a little "Walden" on the banks of the Murray. BB sold the land to MM for \$500 on MM's reassurance that this would be his little slice of wilderness heaven. In fact MM had already plans to build a large lodge on the site. He knew that many students from the fraternities and sororities would rent the lodge for parties. They had been banned from holding parties on the CC campus.

In order to build the lodge MM had to bring in building materials. The cheapest and safest route was across AA's land. Without attempting to notify AA, MM brought the supplies in carefully ensuring that AA's land was not harmed. To obtain the best views from the apartments in the lodge MM erected half of the lodge on the bend of the Murray. The area had a stand of ancient river oaks on it. He relied on a survey drawn by **Pamela Planner** (PP). The survey covering public and private real estate had been recently done for the Murray River Keeper to aid persons intending to use the resources of the river. The survey was inaccurate and in fact the river bend land belonged to BB. The wood of the ancient river oaks is much sought after and prized by wood turners and sculptors for its spectacular grains. MM used the timber for framing of the lodge.

After five years in Australia AA returned with his young children to find that MM's huge lodge was conducting constant, raucous and unseemly parties. It was a multilevel structure that blocked his views of the Murray and the famous bluffs beyond. No-one had told him of MM's activities. His plans to settle with his family in this idyllic setting are destroyed.

Advise AA on his recourse and remedies he may pursue. AA also tells you that he is thinking of selling rights to **Fred Fracker** (FF) to license him to pump tailings and residue from his, FF's, oil and gas fracking operations farther up the valley. The site for the tailings pond is close to the river. You are aware that FF has a reputation of paying big sums for rights but leaving sites unremediated. The site would constitute an eyesore for lodge users and a pollution threat to the Murray's waters. MM would be much aggrieved by such an operation. He is likely to take every potential remedy available to him.

QUESTION 2

A. **Albert** (A) is a founder and a director of Casinos Inc. a corporation that runs casinos internationally. **Barney** (B), knowing of A's contacts in the international gambling industry, approaches A with a proposition. The Casino of Macao is potentially for sale; it is a very large operation with enormous profits because of its proximity with the rest of China. B offers A a commission of \$4M if he can broker the sale to him of the Macao Casino. A makes contact with the controllers of the Casino and after negotiations they agree to sell to B on the terms negotiated by A. A does not tell Casinos Inc. or Casino of Macao of his role as agent and broker for B. A pockets the commission. A leads the latter to believe he is acting as a friendly go-between.

A gives his wife Charlene \$2M with which she discharges mortgages that were held by X and Z over a house she owns in Palm Beach Florida. Post recession the Palm Beach real estate appreciates rapidly. He deposits \$2M in his checking bank account with Commercial Bank and Trust. The balance swells with other deposits to \$3M on the day of the deposit. The next day he draws checks to pay gambling debts for \$1.5M and buys two vintage Rolls Royces for his son and daughter for \$500,000 each. The next day he deposits \$200,000 he has received for annual director's fees from Casinos Inc.

He had also invested in Bernie Madoff's "ponzi scheme" a sum of \$50,000 upon which "investment" he had received a dividend of \$5,000 that he had deposited in his account. The rest is lost when the scheme is uncovered. He had also induced Alice Alldyce a rich widow in the city to give him \$100,000 for "community projects" related to welfare for the elderly. He gave \$50,000 of this for improvements for a church of which he was a member and lost another \$50,000 at the roulette wheel the day after.

Faced with debts of over \$5M A declares bankruptcy. Advise those aggrieved by A's conduct what remedies they may optimally claim in the circumstances. Will you need to obtain extra information through discovery?

B. Charlene, Albert's wife, who is a former movie star, embarks again on her career. She is considering various roles when she is asked by Faith Films, Inc. to take a role in a Christian movie playing the brave person of faith in faithless times. She accepts the role and takes her remuneration as a portion of the net profits of the movie. Her contract stipulates that she is to provide her acting services exclusively to Faith Films, Inc. She spends months on the set in California and the movie is about to be released when the producers received word that Charlene is Albert's wife thus spoiling, in the producer's judgment, her credibility in the morality play being depicted on the screen. She is told her services are no longer needed. Instead of Charlene another actress of "impeccable morality" is quickly substituted. However, her poodle FiFi still featured in the scenes featured in the movie. FiFi is given a dubbed human voice and comments in a sage way on the flaws and foibles of the characters in the movie's plot. The movie is a great financial success. Charlene finds she cannot obtain new roles, although FiFi is now much in demand. She declares bankruptcy when she cannot pay her creditors in due course.